

**INDIANA JUDICIAL NOMINATING COMMISSION**  
**INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS**

**Fiscal Year 2004-2005**

**Meg Babcock, Counsel**

The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications are two seven-member commissions established by Article VII, Section 9, of the Constitution of Indiana. They perform two distinct functions within the judiciary, but are comprised of the same membership. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. It also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. (There were no vacancies in fiscal year 2004-2005). The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office. When appropriate, the Commission privately cautions judges who have violated the Code of Judicial Conduct. In the most serious cases, the Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Commission and its staff provide judges and judicial candidates with advice about their ethical obligations.

The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of the Nominating Commission and the Qualifications Commission. The Commission is comprised additionally of three lawyers, elected by other lawyers in their districts, and three non-lawyers who are appointed by the Governor, all to three-year terms. The elected and appointed Commission members serving in 2004-2005 were James O. McDonald, Esq., Terre Haute; Derrel E. Zellers, Tell City; James H. Young Esq.,

Indianapolis; Payton Wells, Indianapolis; John O. Feighner, Esq., Fort Wayne, and Elizabeth Peralta, South Bend. Donald W. Ward, Esq., Indianapolis, and Judy Johns Jackson, Columbus, completed their terms during the fiscal year. Elizabeth Peralta resigned her position in 2005 and the Governor's appointment for her successor was pending at the end of the fiscal year.

The Nominating Commission met on five occasions during the fiscal year. It recertified eighty-five Senior Judges, certified twelve new Senior Judges, and declined to certify one applicant for Senior Judge status. One applicant withdrew her application, and another application was pending at the end of the fiscal year.

In fiscal year 2004-2005, the Judicial Qualifications Commission met on five occasions. The Commission considered four hundred four complaints alleging judicial misconduct. Two hundred sixty-four complaints were dismissed summarily on the basis they did not raise issues of judicial misconduct, but were complaints about the outcomes of cases or otherwise outside the Commission's jurisdiction. Another one hundred complaints were dismissed on the same grounds after Commission staff examined court documents and conducted informal interviews. The Commission sent advisory letters to six judges against whom complaints were dismissed.

Of the remaining forty cases on the Commission's docket, the Commission concluded thirty-three new investigations during the fiscal year. Of those, six complaints were dismissed after the Commission concluded the judges had not violated the Code of Judicial Conduct. The Commission privately cautioned twenty-two judges for deviations from the Code. The subjects of the twenty-two cautions, in order of frequency, related to *ex parte* contacts (7), allowing the appearance of partiality (7), injudicious demeanor (6), delayed rulings (4), deviations from precedent or court rules (3), misuse of the court's power (3), injudicious conduct unrelated to the judicial office (2), and failure to provide adequate notice (1). (Some cautions related to more than one violation).

An investigation from the prior fiscal year was resolved in October 2004 when the Supreme Court removed from office a judge of the Lake Superior Court following an April 2004 hearing before the Honorable Carl A. Heldt, Vanderburgh Circuit Court, the

Honorable Tanya Walton Pratt, Marion Superior Court, and the Honorable John F. Surbeck, Jr., Allen Superior Court (*Matter of Kouros*, 816 N.E.2d 21 (Ind. 2004)). One judge, also investigated during the prior year, and the subject of three complaints, agreed to resign rather than face formal charges. The Commission dismissed two other complaints in light of another judge's resignation. And, in January 2005, the Honorable Michael P. Scopelitis, St. Joseph Superior Court, the Honorable David A. Shaheed, Marion Superior Court, and the Honorable Lynn Murray, Howard Circuit Court, presided over a hearing on Commission charges filed the prior year against Judge James Danikolas, Lake Superior Court, Civil 3. (*Matter of Danikolas*, Cause No. 45S00-0403-JD-126). At the conclusion of the fiscal year, the case was pending before the Court on the Commission's recommendation of removal from office.

The Commission filed formal charges against two judges during the fiscal year. *Matter of Endris*, Cause No. 49S00-0409-JD-418, which had been scheduled for trial in May 2005 before the Honorable Gregory J. Donat, Tippecanoe Superior Court, the Honorable Sheila M. Moss, Lake Superior Court, and the Honorable G. Michael Witte, Dearborn Superior Court, was dismissed in April 2005 on the Commission's motion when the judge announced her retirement. In November 2005, the Commission filed formal charges against Judge L. Benjamin Pfaff, Elkhart Superior Court #1. (*Matter of Pfaff*, Cause No. 20S00-0501-JD-14). At the end of the fiscal year, the case was scheduled for a July 2005 trial before the Honorable Steve David, Boone Circuit Court, the Honorable Daniel F. Donahue, Clark Circuit Court, and the Honorable Susan Orr Henderson, Fountain Circuit Court. Another Commission case was resolved when the judge agreed to accept a Commission Admonition in lieu of charges. (*Commission Admonition of Judge Thomas Newman, Jr., Madison Superior Court*, June 30, 2005). One formal investigation and one initial inquiry were pending at the end of the year.

Finally, during the fiscal year, Commission counsel responded to approximately five hundred requests for advice from judges and judicial candidates about their obligations under the Code of Judicial Conduct.

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